

Federal Housing Enterprise Oversight

§ 1703.51

§ 1703.39 Responses to demands served on employees.

(a) *Advice by employee served.* Any employee who is served with a demand in a legal proceeding requiring his or her personal attendance as a witness or requiring the production of documents or information in any proceeding, shall immediately notify the General Counsel of such service, of the testimony and documents described in the demand, and of all relevant facts which may be of assistance to the General Counsel in determining whether the individual in question should be authorized to testify or the documents requested should be made available.

(b) When authorization to testify or to produce documents has not been granted by the Director, OFHEO Counsel shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Director.

(c) *Appearance by employee served.* Unless OFHEO has authorized disclosure of the information requested, any employee who has OFHEO information that may not be disclosed and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and respectfully decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this subpart. If the court nevertheless orders the disclosure of the information or the giving of testimony irrespective of instructions from the Director not to produce the documents or disclose the information sought, the employee upon whom the demand has been made shall continue to decline respectfully to disclose the information and shall report promptly the facts to OFHEO for such action as OFHEO may deem appropriate.

(d) A determination under this subpart to comply or not to comply with any demand shall not constitute an assertion or waiver of privilege, lack of relevance, technical deficiencies, or any other ground for noncompliance. OFHEO reserves the right to oppose

any demand on any legal ground independent of its determination under this subpart.

§ 1703.40 Responses to demands served on nonemployees.

(a) OFHEO reports of examinations, or any documents related thereto, are the property of OFHEO and are not to be disclosed to any person without the Director's prior written consent.

(b) If any person who has possession of an OFHEO report of examination, or any documents related thereto, is served with a demand in a legal proceeding directing that person to produce such OFHEO documents or to testify with respect thereto, such person shall immediately notify the General Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of OFHEO and cannot be released without OFHEO's consent and that their production must be sought from OFHEO following the procedures set forth in § 1703.33, paragraphs (b) and (c) of § 1703.34, and paragraph (b) of § 1703.37 of this subpart.

[63 FR 71005, Dec. 23, 1998. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

Subpart F—Rules and Procedures for Service Upon OFHEO

§ 1703.51 Service of process.

(a) Except as otherwise provided by OFHEO regulations, the Federal Rules of Civil Procedure, or order of a court with jurisdiction over OFHEO, any legal process upon OFHEO, including a legal process served on OFHEO demanding access to its records under the FOIA, shall be duly issued and served upon the General Counsel and any OFHEO personnel named in the caption of the documents.

(b) Service of process upon the General Counsel may be effected by personally delivering a copy of the documents to the General Counsel or by sending a copy of the documents to the General Counsel by registered or certified mail,